



CHRIS ABELE, MILWAUKEE COUNTY EXECUTIVE
JAMES KEEGAN, INTERIM DIRECTOR OF PARKS, RECREATION AND CULTURE

Date: April 30, 2013

To: Chairwoman Marina Dimitrijevic, County Board of Supervisors

From: James Keegan, Interim Director, Department of Parks, Recreation and Culture

Subject: **Request to Enter into a Vendor Permit Agreement for Paddleboat Rental Concession Services at the Lakefront – ACTION**

POLICY

The Department of Parks, Recreation and Culture (DPRC) respectfully requests authorization to enter into a vendor permit agreement for paddleboat concession services at the lakefront.

BACKGROUND

In January 2013, the DPRC issued a number of Requests for Proposals (RFP) to provide various concession services in the Milwaukee County Parks located on the lakefront. Funtime LLC d/b/a Wheel Fun Rentals (Wheel Fun) responded to the paddleboat concessions RFP and, meeting all terms and conditions of the process, was awarded the opportunity. Wheel Fun would be permitted to operate a concession for the rental of paddleboats and related items. The vendor would also be permitted to sell non-alcoholic beverages and various pre-packaged food items.

The term of this agreement is five (5) years with two (2) options to extend the term for one (1) additional consecutive year. The vendor has agreed to pay the



County \$112,500 over the first five (5) years and an additional \$23,250 in year six (6) and \$23,500 in year seven (7), if renewed. In addition, there is a percentage profit-sharing agreement if gross receipts exceed established amounts.

Wheel Fun will be permitted to construct a small rental kiosk, only after receiving approval from Milwaukee County regarding design and placement, near the lagoon in Veterans Park. Wheel Fun will be responsible for utility hookups and monthly payments.

Wheel Fun will be required to submit a list and pricing information for the products it intends to rent or sell to the public for approval by the DPRC. The Parks Director maintains the right to prohibit the sale or rental of any item that is deemed inappropriate or otherwise. Wheel Fun is required to maintain customer service as a top priority and provide employees who are neat in appearance, professional, friendly, and courteous to customers and the general public. The concession is a fair-weather operation open daily, weather permitting.

On April 29, 2013, an Administrative Review Determination Panel (ARDP) convened as provided for under Milw. Co. Ord 110.07 in response to an appeal of the DPRC recommendation to award this contract to Wheel Fun Rentals. The ARDP was responsible for reviewing the RFP process used by the DPRC to ensure compliance with existing rules and regulations.

The ARDP unanimously affirmed that the DPRC followed proper protocol in issuing the RFP and making the recommendation that the contract be awarded to Wheel Fun Rentals.

RECOMMENDATION

The Interim Parks Director respectfully recommends that the DPRC be authorized to enter into a vendor permit agreement with Funtime LLC d/b/a Wheel Fun Rentals for paddleboat concession services at the lakefront.

Prepared by: Laura Schloesser, Chief of Administration and External Affairs

Recommended by:

Approved by:

Laura Schloesser, Chief of
Administration and External Affairs

James Keegan, Interim Parks
Director

Attachment – Request for Proposal Criteria and Scoring

Cc: County Executive Chris Abele
Amber Moreen, Chief of Staff, County Executive's Office
Kelly Bablitch, Chief of Staff, County Board
Supv. Gerry Broderick, Chair, Parks, Energy & Environment Committee
Supv. Jason Haas, Vice-Chair, Parks, Energy & Environment Committee
Daniel Laurila, Fiscal Mgt. Analyst, Admin & Fiscal Affairs/DAS
Janelle Jensen, Parks, Energy & Environment Committee Clerk
Jessica Janz-McKnight, Research Analyst, County Board

(ITEM NO.) From the Director, Department of Parks, Recreation and Culture, requesting authorization to enter into a vendor permit agreement for paddleboat concession services at the lakefront.

A RESOLUTION

WHEREAS, in January 2013 the Department of Parks, Recreation and Culture (DPRC) issued a number of Requests for Proposals (RFP) for various concession services in the Milwaukee County Parks located at the lakefront; and

WHEREAS, Funtime LLC d/b/a Wheel Fun Rentals (Wheel Fun) responded to the paddleboat concession RFP; and

WHEREAS, the term of this agreement is five (5) years with, upon mutual agreement, two (2) additional one (1) year extensions; and

WHEREAS, the DPRC will receive \$112,500 during the five (5) year term and an additional \$23,250 in year six (6) and \$23,500 in year seven (7), if renewed; and,

WHEREAS, the DPRC will receive a percentage of gross receipts if sales exceed established amounts; and

WHEREAS, Wheel Fun is responsible for its own utility hookups and monthly payments; and

WHEREAS, Wheel Fun is permitted to construct a small rental kiosk near the Veterans Park lagoon; and

WHEREAS, Wheel Fun is required to submit a list and pricing information for the products it intends to rent or sell to the public for approval by the DPRC; and

WHEREAS, Wheel Fun is required to maintain customer service as a top priority; now, therefore,

BE IT RESOLVED, that the Milwaukee County Board of Supervisors hereby authorizes the Interim Parks Director to execute a vendor permit agreement with Funtime LLC d/b/a Wheel Fun Rentals for paddleboat concessions at the lakefront.

MILWAUKEE COUNTY FISCAL NOTE FORM

DATE: April 30, 2013

Original Fiscal Note ☒

Substitute Fiscal Note ☐

SUBJECT: Vendor Permit Agreement for Paddleboat Rental Concession Services at the Lakefront

FISCAL EFFECT:

- ☒ No Direct County Fiscal Impact
- ☒ Existing Staff Time Required
- ☐ Increase Operating Expenditures
(If checked, check one of two boxes below)
- ☐ Absorbed Within Agency's Budget
- ☐ Not Absorbed Within Agency's Budget
- ☐ Decrease Operating Expenditures
- ☐ Increase Operating Revenues
- ☐ Decrease Operating Revenues
- ☐ Increase Capital Expenditures
- ☐ Decrease Capital Expenditures
- ☐ Increase Capital Revenues
- ☐ Decrease Capital Revenues
- ☐ Use of contingent funds

Indicate below the dollar change from budget for any submission that is projected to result in increased/decreased expenditures or revenues in the current year.

	Expenditure or Revenue Category	Current Year	Subsequent Year
Operating Budget	Expenditure	0	0
	Revenue	0	0
	Net Cost	0	0
Capital Improvement Budget	Expenditure	0	0
	Revenue	0	0
	Net Cost	0	0

DESCRIPTION OF FISCAL EFFECT

In the space below, you must provide the following information. Attach additional pages if necessary.

- A. Briefly describe the nature of the action that is being requested or proposed, and the new or changed conditions that would occur if the request or proposal were adopted.
- B. State the direct costs, savings or anticipated revenues associated with the requested or proposed action in the current budget year and how those were calculated.¹ If annualized or subsequent year fiscal impacts are substantially different from current year impacts, then those shall be stated as well. In addition, cite any one-time costs associated with the action, the source of any new or additional revenues (e.g. State, Federal, user fee or private donation), the use of contingent funds, and/or the use of budgeted appropriations due to surpluses or change in purpose required to fund the requested action.
- C. Discuss the budgetary impacts associated with the proposed action in the current year. A statement that sufficient funds are budgeted should be justified with information regarding the amount of budgeted appropriations in the relevant account and whether that amount is sufficient to offset the cost of the requested action. If relevant, discussion of budgetary impacts in subsequent years also shall be discussed. Subsequent year fiscal impacts shall be noted for the entire period in which the requested or proposed action would be implemented when it is reasonable to do so (i.e. a five-year lease agreement shall specify the costs/savings for each of the five years in question). Otherwise, impacts associated with the existing and subsequent budget years should be cited.
- D. Describe any assumptions or interpretations that were utilized to provide the information on this form.

- A. Request to enter into a Vendor Permit Agreement for Paddleboat Rental Concession Services at the Lakefront
- B. Wheel Fun Rentals agrees to pay the DPRC \$22,000 in 2013 and \$22,250 in 2014 plus 20% of gross receipts greater than the total amount invoiced.
- C. No Impact
- D. None

Department/Prepared By Laura Schloesser/DPRC

Authorized Signature _____

Did DAS-Fiscal Staff Review? ☐ Yes ☒ No

Did CBDP Review?² ☒ Yes ☐ No ☐ Not Required

¹ If it is assumed that there is no fiscal impact associated with the requested action, then an explanatory statement that justifies that conclusion shall be provided. If precise impacts cannot be calculated, then an estimate or range should be provided.

RFP Criteria and Scoring: Paddleboat Rental Services

Category	Criteria	Weight	Average Juneau Park Paddleboats	Average Wheel Fun Rentals
A	Qualifications and Experience	30	26	28.33
B	Revenue to the County	30	20	29.33
C	Quality of Services and Products and Reasonableness of Pricing	10	7.33	8.33
D	Innovation and Variety of Services and Products	10	6.33	10
E	Marketing Plan	10	6.67	8
F	DBE Participation	10	7.33	4
	Total	100	73.67	88

VENDOR PERMIT AGREEMENT
BETWEEN
MILWAUKEE COUNTY DEPARTMENT OF PARKS, RECREATION AND CULTURE
AND
FUNTIME LLC D/B/A WHEEL FUN RENTALS

This Vendor Permit Agreement (the "Agreement") is made and entered into effective _____, 2013 (the "Effective Date"), by and between the MILWAUKEE COUNTY DEPARTMENT OF PARKS, RECREATION AND CULTURE (the "County") and FUNTIME LLC D/B/A WHEEL FUN RENTALS (the "Vendor"), as represented by: Dwight Bratholt, (701) 367-7704. Referenced together, the County and the Vendor are the "Parties" to this Agreement.

WITNESSETH:

WHEREAS, in January 2013 the County issued a Request for Proposals ("RFP") to provide paddleboat rental concession services in one of the Milwaukee County Parks located on the Milwaukee Lakefront, and the Vendor submitted a written proposal response meeting all terms and conditions of the RFP process; and

WHEREAS, the Milwaukee County Board of Supervisors, by virtue of adopting Resolution ____ on ____, 2013, has authorized the Interim Director of the Department of Parks, Recreation and Culture ("DPRC") to enter into this agreement with the Vendor for and on behalf of Milwaukee County.

NOW THEREFORE, Vendor is hereby awarded a contract to provide the concession services per all terms and conditions in the RFP and as indicated in the Vendor's complete response thereto, which documents are both hereby incorporated by reference. Each party, for good and valuable consideration and the promises of County and Vendor set forth in this Agreement, agrees as follows:

PROVISIONS:

1. Operation of Concession:

1.1 General: Vendor is permitted to operate a concession for the rental of paddleboats, kayaks, canoes, barracudas, and related items (the "Concession"). The Concession shall be operated off the Lagoon at Veterans Park at 1400 North Lincoln Memorial Drive, Milwaukee, Wisconsin (the "Premises"). Vendor shall be the sole owner of the structure operated on the Premises (the "Facility"). Vendor shall have the exclusive right to provide the above-indicated service in the Park. The Concession is a fair-weather operation, and the times of operation shall be mutually agreed upon between Vendor and the County. Vendor shall suspend operation of the Concession whenever the Park is closed.

1.2 Non-exclusive Food and Beverage Concession: Vendor shall further be permitted to sell bottled water, non-alcoholic beverages, and pre-packaged food items including chips, snacks, candy, cookies, and ice cream as approved by the Parks Director or his designee. Vendor shall comply with all current Milwaukee County Parks

practices, including compliance with agreements regarding Milwaukee County Parks's exclusive non-alcoholic beverage provider and prohibitions on the sale of gum and glass bottles.

1.3 Special Events: Any special events hosted by Vendor shall be governed by standard DPRC and Milwaukee County procedures.

1.4 Prerequisites: This Agreement and the obligations of County and Vendor hereunder are contingent upon Vendor successfully meeting the Milwaukee County "Due Diligence" requirements in a timely manner (see attached, as Exhibit A).

1.5 Rights Reserved to County: County reserves the right to award a contract with one (1) or more additional vendors to provide other concessionable items in other areas of the Park. County further reserves the right to operate its own concession area during any and all events held in its Parks. County also reserves the right to close the Concession and use the Lagoon and related amenities, free of charge, and retain all Gross Receipts (as hereinafter defined) derived therefrom, for up to ten (10) days of County's choice during each Contract Year of the Term (as hereinafter defined) of the Agreement. County shall provide Vendor at least thirty (30) days' prior notice of its intent to close the Concession and use the Lagoon pursuant to this Section 1.5. "Gross Receipts" shall mean the total of all receipts (cash, checks, credit cards) derived from the sale of all merchandise associated with the Concession, less sales tax. Deductions for client non-payments or bad-debt expenses are not allowed. "Contract Year" means the twelve (12) calendar months starting on the Effective Date and every subsequent twelve (12)-month period during the Term.

2. Term: This Agreement shall commence on the Effective Date and expire on March 30, 2018 (the "Initial Term"). The Parties shall have two (2) options to extend the Term for one (1) additional consecutive year if mutually agreeable to both Parties (each such period, a "Renewal Term"). Such option may be exercised so long as Vendor first provides written notice to County of its desire to enter into a Renewal Term at least six (6) months' prior to the then-current Term expiration date. The Initial Term and any then-existing Renewal Term shall be referred to as the "Term" herein.

3. Payment: Vendor shall pay County the following amounts at the close of each June, July, August, and September during the Term:

Year One	\$5500
Year Two	\$5562.50
Year Three	\$5625
Year Four	\$5687.50
Year Five	\$5750
Year Six (if renewed)	\$5812.50
Year Seven (if renewed)	\$5875

County shall invoice Vendor for the above-referenced amounts within fifteen (15) days at the close of the applicable month, and Vendor shall pay County within thirty (30) days of receipt of invoice. If, over the course of Vendor's Operating Year (as hereinafter defined), twenty percent (20%) of Vendor's Gross Receipts (the "Gross Receipt Percentage") is greater than the total amount invoiced to Vendor for such Operating Year pursuant to this Section 3 (the "Flat Fee"), Vendor shall remit to County the

difference between the Gross Receipt Percentage and the Flat Fee by April 1. An "Operating Year" shall be that period from March 1 through the last day of February of each year of the Agreement; provided, however, that during the initial year of the Term, the Operating Year shall be from the Effective Date through March 1. Checks shall be made payable to the Milwaukee County Treasurer and mailed or delivered to: Milwaukee County Parks Department, Milwaukee County Treasurer, 9480 Watertown Plank Rd., Wauwatosa, Wisconsin, 53226.

4. Utilities: Vendor shall be responsible for its own Utility hookups and monthly payments. "Utilities" shall include electricity, gas, water and sewer, and telephone.
5. Sales Reports: Upon demand, Vendor agrees to compile and provide County with a detailed summary report of all sales activities, a financial reconciliation of all commissions owed and paid, and remit to County any additional amounts as may be required.
6. Alterations and Improvements: Prior to the start of any construction or renovation of the Facility and the Premises, including any subsequent alterations or renovations, Vendor shall submit any detailed construction plans and specifications to the Parks Department and the Architecture and Engineering Section of Milwaukee County Facilities Management for review and approval. In no event shall Vendor make any alterations or additions to the Facility or the Premises without the prior written consent of the Parks Department and the Architecture and Engineering Section of Milwaukee County Facilities Management. All development and landscaping shall be completed in a first-class manner and consistent with the standards established for other work in Milwaukee County Parks. Any and all alterations, additions and improvements shall be made in compliance with all statutes, laws, ordinances, rules, and regulations of any governmental authority having jurisdiction over the Premises. Vendor shall also indemnify and hold County harmless from and against all statutory liens or claims of liens of any contractor, subcontractor, laborer or any other party which may arise in connection with any alteration, addition or improvement to the Facility or the Premises undertaken by or on behalf of Vendor. Vendor agrees to provide evidence satisfactory to the County that the total amount of funds necessary to construct the Facility or any proposed renovations thereto are immediately available and dedicated to such purpose and documentation is in place to provide for the orderly disbursement of such funds during the course of construction to pay for all permits, material, labor, supplies, and any other miscellaneous items used or necessary for such construction. Vendor shall deliver to County evidence reasonably acceptable to the County that the total amount of such funds are immediately available and dedicated for the above purpose prior to any construction activities taking place on the Premises.
7. Parks Logo: Vendor is responsible for all marketing and advertising to promote its activities. Vendor shall acknowledge the Parks Department and include the Parks logo in all promotional materials, whether print or digital, directly related to its activities covered under this Agreement. All proposed banners, signage and advertising on or within the Premises, including if placed on temporary or portable structures, must be pre-approved in writing by the Parks Director.
8. Public Access: Vendor understands that the Concession is part of a public park, and the Premises are to remain open and accessible to the public in a manner that is compatible with the use of the Concession as contemplated by this Agreement.

9. Compliance with Laws: Vendor shall, at Vendor's expense, promptly comply with all laws, rules, and regulations made by any governmental authority having jurisdiction over Vendor's use of the Park and the Concession, including all local health code requirements. Vendor shall obtain and pay for all necessary permits and licensing for the operation of the Concession, including, if applicable, permits and licensing for a food and beverage concession in the City of Milwaukee.
10. Taxes: Vendor shall pay all taxes of whatever character which may be levied or charged upon Vendor to use the Premises or own the Facility, or upon the improvements, fixtures, equipment or other property, or upon the Concession operations under the Agreement.
11. County Approval of Items to be Rented and Sold: Vendor shall provide County with a list and pricing information for the products it intends to sell to the public for approval. The Parks Director maintains the right to prohibit the sale or rental of any item that he/she deems to be inappropriate or otherwise within the Milwaukee County Parks System.
12. Cleanliness; Garbage: Vendor is responsible for maintaining the Premises and surrounding areas, at least twenty-five (25) feet beyond the Concession, in a state of cleanliness and repair to prevent injury to the public. No offensive or refuse matter, nor any substance constituting an unnecessary, unreasonable, or unlawful hazard, nor any material detrimental to the public health, shall be permitted to remain on the Premises, and Vendor shall prevent any such matter or material from being or accumulating on the Premises. Vendor, at its expense, shall see that all garbage or refuse is collected as often as necessary and in no case less than once a day and disposed of in the County receptacles. Vendor will incur the cost of all excessive garbage pick-up from the Concession during the Term.
13. Safety: Vendor shall instruct customers and staff on the operation and safety rules/standards for all rental equipment. Vendor shall require all customers to sign a statement indicating that they are familiar with the operation and safety rules/standards for such equipment along with a liability waiver in favor of County. Vendor shall require customers to use applicable safety equipment such as life jackets.
14. Maintenance of Facility and Equipment: Vendor shall equip the Concession with all equipment necessary to conduct business such as storage racks, all rental equipment, and all safety equipment including life jackets. Vendor shall, at all times and at its own expense, keep and maintain the Facility and all equipment, whether owned and/or installed by Vendor or the County, such as, but not limited to, all of the fixtures, equipment and personal property in the Facility, in good repair and in a clean, sanitary and orderly condition and appearance. No equipment provided by County shall be removed or replaced by Vendor without the prior written consent of the Parks Director, and if consent is secured, removal and/or replacement shall be at Vendor's expense.
15. Removal of Facility, Equipment and Supplies: Upon expiration or termination of this Agreement for any reason or no reason, Vendor shall remove, at its costs, the Facility and all of its supplies, displays, and related items from the Premises within three (3) days of the expiration or termination date, and shall restore the Premises to its prior condition, satisfactory to the Parks Director.

16. Staff: Vendor shall maintain customer service as a top priority. Vendor shall employ a sufficient number of qualified staff to properly operate the Concession. Vendor shall provide employees who are professional, friendly, and courteous to customers and the general public. Employees shall maintain a neat appearance, exercise good public relations skills, respond to customer complaints and questions, and conduct themselves in a high standard acceptable to County. Vendor and staff shall wear appropriate attire which, in the sole determination of County, clearly distinguishes Concession staff from Milwaukee County Parks staff.
17. Nondiscrimination, Affirmative Action and DBE Goals:

17.1 Generally: There shall be no discrimination against or segregation of any person, or group of persons, on account of gender, age, race, color, religion, creed, national origin or ancestry in the use of the Premises or the Concession, and Vendor (or any person claiming under or through Vendor) shall not establish or permit any such practice or practices of discrimination or segregation with reference to the Premises or the Concession.

17.2 Non-Discrimination: Vendor certifies that it will not discriminate against any employee or applicant for employment because of race, color, national origin, age, sex or handicap which includes, but is not limited to, the following: employment, upgrading, demotion or transfer, recruitment, or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship. Vendor will post in conspicuous places, available for employment, notices setting forth the provisions of the non-discriminatory clause. Attached hereto as Exhibit B is an Equal Opportunity Certificate that shall be executed and delivered by Vendor simultaneously with the execution and delivery of the Agreement.

17.3 Affirmative Action Program: Vendor certifies that it will strive to implement the principles of equal employment opportunity through an effective affirmative action program which shall have as its objective to increase the utilization of women, minorities and handicapped persons and other protected groups, at all levels of employment in all divisions of its work force, where these groups may have been previously under-utilized and under-represented. Vendor also agrees that in the event of any disputes as to compliance with the aforementioned requirements, it shall be its responsibility to show that it has exercised good faith efforts to meet all requirements.

17.4 Affirmative Action Plan: Vendor certifies that if it has fifty (50) or more employees, it has filed or will develop and submit a written Affirmative Action Plan. Current Affirmative Action Plan, if required, must be filed with any of the following: The Office of Federal Contract Compliance Programs, the State of Wisconsin, or the Milwaukee County Department of Audit, City Campus, 9th Floor.

17.5 Non-Segregated Facilities: Vendor certifies that it does not and will not maintain or provide segregated facilities for its employees, and that it does not permit its employees to perform their services at any location under its control where segregated facilities are maintained.

17.6 Reporting Requirement: When applicable, Vendor certifies that it will comply with all reporting requirements and procedures established in Title 41 Code of Federal Regulations, Chapter 60.

17.7 Compliance: Vendor certifies that it is not currently in receipt of any outstanding letters of deficiencies, show cause, probable cause, or other such notification of noncompliance with EEO regulations.

17.8 Disadvantaged Business Enterprise Goals: Vendor shall use reasonable efforts to cause its contractors to establish Disadvantaged Business Enterprise ("DBE") participation goals, consistent with Milwaukee County DBE goals of seventeen percent (17%) for professional services contracts, and to use good faith efforts to achieve those goals. The Milwaukee County Community Business Development Partners shall assist Vendor in soliciting potential DBE vendors for the improvements and monitor such goal attainment. Vendor's contact regarding DBE participation is: Director, Nelson Soler, at (414) 289-4608.

18. Site Restoration: Both Vendor and County shall together participate in a pre-season and post-season inspection of the Premises. Vendor shall be responsible for any actual documented physical damage to the Premises caused by Vendor, its employees, agents, representatives, and guests. Within five (5) days of the discovery of any such damage, the Premises shall be restored to the satisfaction of the Parks Director.
19. Security: Unarmed security personnel are permitted within the Premises for the purposes of checking identification and general observation. Vendor shall be solely responsible for and assume all risks related to the security and protection of the Premises and any equipment and for the prevention of unauthorized access to the Premises. Vendor expressly acknowledges that any security measures deemed necessary or desirable for protection of the Facility shall be the sole responsibility of Vendor at no cost to County. Vendor shall notify County of any incident resulting in loss or damage to the Premises or breach of security whether or not such incident is reported to the Milwaukee County Sheriff's Office.
20. Inspection by County: County shall at all reasonable times have the right to enter the Premises and the Facility to inspect the condition thereof, and to improve or repair the Premises, and to make such repairs, alterations, improvements or additions as County may deem necessary or desirable; provided, however, such entry shall be done in such a manner that it does not unreasonably interfere with the conduct of Vendor's use of the Premises.
21. Interest: Unless waived by County Board of Supervisors, Vendor shall be responsible for payment of interest on amounts not remitted in accordance with this Agreement. The rate of interest shall be the statutory rate in effect for delinquent County property taxes (one-percent (1%) per month or fraction of a month) as described in Wisconsin statutes section 74.47(1). The obligation for payment and calculation thereof shall commence upon the day following the due dates established herein.

21.1 Penalty: In addition to the interest described above, Vendor may be responsible for payment of penalty on amounts not remitted in accordance with this Agreement, as may be determined by County. The penalty shall be the statutory rate in effect for delinquent County property taxes (.5% per month, or fraction of a month) as described in Milwaukee County ordinance section 6.06(1) and Wisconsin statutes section 74.47(2). The obligation for payment and calculation thereof shall commence upon the day following the due dates established herein.

21.2 Audit Results: If, as a result of the annual audit required herein, additional amounts are disclosed to be due and owing to the County, interest and penalty shall be calculated thereon in accordance with the above method. Vendor shall remit to the County any additional amounts identified due and owing for the audit including interest and penalty thereon within thirty (30) days following receipt of the audit report by the County.

21.3 Nonexclusivity: This provision permitting collection of interest and penalty by the County on delinquent payments is not to be considered the County's exclusive remedy for Vendor's default or breach with respect to delinquent payment. The exercise of this remedy is not a waiver by the County of any other remedy permitted under this Agreement, including but not limited to termination of this Agreement.

22. Audit: Pursuant to Milwaukee County ordinance section 56.30(6)(e), Vendor shall allow the County or any other party the County may name, when and as they demand, to audit, examine and make copies of records in any form and format, meaning any medium on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by Vendor, including not limited to, handwritten, typed or printed pages, maps, charts, photographs, films, recordings, tapes (including computer tapes), computer files, computer printouts and optical disks, and excerpts or transcripts from any such records or other information directly relating to matters under this Agreement, all at no cost to County. Any subcontracting by Vendor in performing the duties described under this Agreement shall subject the subcontractor and/or associates to the same audit terms and conditions as the Vendor. Vendor (or any subcontractor) shall maintain and make available to County the aforementioned audit information for no less than three years after the conclusion of this Agreement.

23. Insurance: Vendor shall acquire and maintain the established insurance and liability limits for the Concession. Such evidence shall include insurance coverage in the following minimum amounts:

Type of Coverage	Minimum Limits
Commercial General Liability	
Bodily Injury and Property Damage (incl. Personal Injury, Fire Legal, Contractual & Products/Completed Operations)	\$1,000,000 Per Occurrence \$1,000,000 General Aggregate
Advertising Injury	\$1,000,000
Automobile Liability	
Bodily Injury & Property Damage All Autos - Owned, non-owned and/or hired Uninsured Motorists	\$1,000,000 Per Accident Per Wisconsin Requirements
Wisconsin Workers Compensation or Proof of All States Coverage	Statutory

Milwaukee County will be named as an additional insured for General Liability and be afforded a thirty (30)-day notice of cancellation or non-renewal. A waiver of subrogation for Workers Compensation by endorsement in favor of Milwaukee County shall be provided. Disclosure must be made of any non-standard or restrictive additional insured endorsement, and any use of non-standard or restrictive additional insured endorsement will not be acceptable.

A certificate indicating the above coverages shall be submitted by Vendor for the County's review and approval for each successive period of coverage for the duration of this Agreement.

Coverages shall be placed with an insurance company approved to do business in the State of Wisconsin and rated "A" per Best's Key Rating Guide. The insurance requirements contained within this Agreement are subject to periodic review and reasonable adjustment by the County Risk Manager consistent with similarly situated properties within the properties owned by the County.

24. Indemnification: To the fullest extent permitted by law, Vendor shall indemnify the County for, and hold it harmless from all liability, claims and demands on account of personal injuries, property damage and loss of any kind whatsoever, including workers' compensation claims, which arise out of or are in any manner connected to the Premises, based on any injury, damage or loss being caused by any wrongful, intentional, or negligent acts or omissions of the Vendor, its agents, or employees. Vendor shall, at its own expense, investigate all claims and demands, attend to their settlement or disposition, defend all actions based thereon and pay all charges of attorneys and other costs and expenses arising from any such injury, damage or loss, claim, demand or action.

24.1 Environmental Indemnification: Vendor shall, to the fullest extent provided for under any environmental laws, rules and regulations, be responsible for any required repair, cleanup, remediation or detoxification arising out of any Hazardous Materials brought onto or introduced into the Premises or surrounding areas by Vendor, or its agents. Vendor hereby agrees to indemnify, defend and hold County harmless from and against any and all liabilities, costs, expenses (including attorney fees), damages (including but not limited to clean-up, remediation or detoxification of) or any other losses caused by its introduction of any such Hazardous Materials into or onto the Premises and any Hazardous Materials brought onto or introduced into the Premises as described below.

24.2 "Hazardous Materials" as the term is used herein shall mean any substance: (i) the presence of which requires investigation or remediation under any Federal, State or local statute, regulation, ordinance, order, action or policy; or (ii) which is or becomes defined as a "hazardous waste" or "hazardous substance" under any Federal, State or local statute, regulation, ordinance, or amendments thereto.

25. Assignment and Subletting: Vendor may not assign this Agreement, in whole or in part, or sublease any part of the Premises without the prior written approval of the Parks Director.

26. Default:

26.1 Definition: A "Default" will occur under this Agreement if: (a) A party fails to comply with any provision in this Agreement, and such failure continues for thirty (30) days after a written notice from the other party setting forth in reasonable detail the nature of such default; or (b) Vendor ceases to do business as a going concern, ceases to pay its debts as they become due, or admits in writing that it is unable to pay its debts as they become due, or becomes subject to any proceeding under any federal or state bankruptcy law, or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of Vendor's assets or Vendor's interest in this Agreement and fails to remedy such condition within thirty (30) days after written notice from County; or Vendor becomes, without the prior written approval of County, a successor or merged entity in a merger, or a constituent entity in a consolidation, or an entity in a dissolution.

26.2 Remedies: If a Default occurs, then the non-defaulting party shall, at such party's option, have any or all of the following described remedies, all cumulative (so exercise of one remedy shall not preclude exercise of another remedy), in addition to such other remedies as may be available at law or in equity or under any other terms of this Agreement. The non-defaulting party's remedies shall include:

26.3 Termination of Rights: The non-defaulting party may terminate this Agreement by sixty (60) days prior written notice of termination of this Agreement to the defaulting party or by any other lawful means, in which case this Agreement and the Term shall terminate, and Vendor shall vacate the Premises on the termination date. Should County so choose, if Vendor is the defaulting party, Vendor shall cooperate in continuing to staff the Concession during a transition period as County seeks an alternate service provider. Additionally, the non-defaulting party may bring an action to recover any or all of the following from the defaulting party: (i) any unpaid amounts set forth in Section ___ earned as of the date the Agreement terminates; and (ii) any other amount reasonably and directly necessary to compensate the non-defaulting party for all detriment caused by and directly arising from the defaulting party's failure to perform its obligations under this Agreement.

26.4 No Waiver: No failure by the County to insist upon strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right or remedy upon a Default, and no acceptance of full or partial amounts due pursuant to Section 3 during continuance of any such Default, shall waive any such Default or such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Agreement to be performed or complied with by Vendor, and no Default, shall be modified, except by a written instrument executed by County. No waiver of any Default shall modify this Agreement. Each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then-existing or subsequent Default of such covenant, agreement, term or condition of this Agreement.

26.5 Survival: No expiration or termination of this Agreement and no entry into or onto the Premises by County after such expiration or termination shall relieve Vendor of its liabilities and obligations under this Agreement, all of which shall survive such expiration, termination or entry.

27. Independent Contractor: Nothing contained in this Agreement shall constitute or be construed to create a partnership or joint venture between County or its successors or assigns and Vendor or its successors or assigns. This Agreement does not create the relationship of principal and agent.
28. Termination. The County may terminate the Agreement in the event that the Milwaukee County Board of Supervisors, via official action and resolution, effects to close the Facility in the Park or the Park during the Term. If County terminates the Agreement pursuant to this Section, County shall relocate the Concession to another Milwaukee County Parks location reasonably mutually acceptable to Vendor and County.
29. Notices: All notices with respect to this Agreement shall be in writing. Except as otherwise expressly provided in this Agreement, a notice shall be deemed duly given and received upon delivery, if delivered by hand or after posting via US Mail, to the party addressed as follows:

To Vendor:
Funtime LLC d/b/a Wheel Fun Rentals
Attn: Dwight Bratholt, Manager
1 East Scott Street, Unit 1609
Chicago, IL 60610

To County:
Milwaukee County Dept. of Parks
Parks Director
9480 Watertown Plank Road
Wauwatosa, WI 53226

Either party may designate a new address for purposes of this Agreement by written notice to the other party.

30. Integration; Order of Precedence: The parties understand and agree that the RFP and Vendor's RFP Response, including Vendor's Best and Final Offer, are incorporated into and made a part of this Agreement by this specific reference. In the event of a conflict or disagreement among the documents, the following order of precedence shall govern:
- (a) Written amendments to the Agreement;
 - (b) The Agreement;
 - (c) The RFP;
 - (d) Vendor's Best and Final Offer, dated March 1, 2013; and
 - (e) Vendor's original RFP Response.

Signature page follows

IN WITNESS WHEREOF, the Parties hereto have set their hands as follows:

Funtime LLC d/b/a Wheel Fun Rentals

By: _____ Date: _____
Dwight Bratholt, Manager

Milwaukee County Dept. of Parks, Recreation & Culture

By: _____ Date: _____
James Keegan, Interim Director

Approved as to form and independent status: *Reviewed by:*

By: _____ Date: _____ By: _____ Date: _____
Corporation Counsel Risk Management

Approved as to Chapter 42 DBE provisions:

By: _____ Date: _____
Community Business
Development Partners

EXHIBIT A
MILWAUKEE COUNTY DUE DILIGENCE REQUIREMENTS

Procedure REVISION DATE CHAPTER TITLE CHAPTER NO. ADMINISTRATIVE MANUAL Financial & Management 7 MILWAUKEE COUNTY Accounting

ORIG ISSUE DATE SECTION TITLE SECTION NO. 09-28-O 1

Due Diligence 7.92

CHECKLIST. Prior to recommending any venture for consideration, responsible County agencies shall ensure that any of the following applicable factors have been identified:

- Letter of Full Disclosure and Cooperation
- Cash flow projections for the venture.
- Operating budget impact.
- Debt management responsibilities, schedules and procedures.
- Legal liability for all priorities.
- Financial reporting systems and controls.
- Right-to-audit provisions.
- Project feasibility studies and market analysis.
- Key factors for success/failure of the venture.
- Governance structure and procedures.
- Public policy impacts (e. g. Affirmative Action, Disadvantaged Business).
- Employee/labor relations impacts (including benefits).
- Environmental concerns.
- Tax consequences.
- Capital management (e. g. maintenance).
- Conflicts of interest/ethics.
- Performance measurements.
- Organization Chart and Mission Statement
- Name of Lending institution or Bank to determine single or combined reporting

Each relevant item noted above should be included in the description of the proposal, which is subtitled for approval by the County Executive and County Board.

EXHIBIT B
EQUAL OPPORTUNITY CERTIFICATE

[Attached.]

Exhibit B